IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 158 OF 2005

Union of India,
Through G. D. Lotlikar,
Supdt. of Customs(P),
New Customs House,
Mormugao Harbour,
Vasco-da-Gama Goa
Through Public Prosecutor
for UOI. ... Applicant/Original Complainant

versus

1. Mr. Ricardo Martin Rosello,
   Spanish Naional,
   Holder of Passport No.L 697769.

2. Ms. Serrano Sanahuja,
   Spanish National,
   Holder of Passport No.P 638871. ... Respondents/Original Accused

Mr. Joseph Vaz, Special Public Prosecutor for the Applicant.

CORAM : N. A. BRITTO, J.

DATE : 15TH SEPTEMBER,2005.

ORAL ORDER

Heard Mr. Joseph Vaz, the learned Special Public Prosecutor on behalf of the applicant/complainant.

2. For the view to be taken, notice to the respondents, who are both foreigners, is dispensed with.

3. The complainant had filed Special Criminal Case No. 19/2003 against the respondents/accused on the allegation that on 18-3-2003 at about 14.50 hours when both the accused being Spanish Nationals reported with their baggage at Dabolim Airport they were found with two VIP air bags, one of black colour and the other of brownish green colour both containing 22.095 kgs. of hashish.

4. In the trial which followed, the prosecution examined 7 witnesses including the said complainant. The learned Special Judge, after considering the evidence led on behalf of the complainant by Judgment/Order dated 3-5-2005 has given benefit of doubt to the accused and acquitted them under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 r/w Section 23 of the said Act.

5. Amongst the prosecution witnesses examined on behalf of the complainant, PW5/Suresh Babu was the foremost

and the most important witness. It is he who was working at the airport, in the Security Department and at the relevant time was in-charge of the X'ray machine where baggage of passengers who were about to check in, was being screened. There is no dispute that the said two bags allegedly brought in by both the accused were unlocked and not only that they also did not carry any passenger tags attached to the said bags nor did they have the names of the passengers written on the same. Admittedly, also none had seen the accused placing the said bags into the conveyor belt of the X'ray machine but when PW5/Suresh Babu, as the bags passed through the X'ray machine, found that some suspicious images were noticed on the screen of the X'ray machine he kept aside the said bags. According to him, he asked a general question as to whom the said two bags belonged when both the accused, one of whom is a male and the other a female are alleged to have identified the said bags as belonging to them. PW5/Suresh Babu further stated that the said accused also disclosed that the bags were containing their personal belongings and food stuff and, therefore, he requested both of them to open the bags and also for their passports and tickets so that he could make an entry on the register. According to him,

entries on the said register were made when suspicious baggage was noted. PW5/Suresh Babu had further stated that he made an entry on the said register and in the meantime called one of his colleagues by name Vardhan who came there and personally checked the said bags and he too noticed something unusual in the bags and informed the Airport Manager Shri Sharma and the Security in-charge Mr. Khanvilkar and also Mr. Jha who was the Custom Officer at the relevant time and who in turn alerted the complainant Lotlikar. PW5/Suresh Babu also stated that all of them emptied the contents of the suitcases and put the said suit-cases back on the screening machine when again the same unusual images were seen on the screen and the suit-cases were still having hashish. According to him, there was a false bottom to one of the suitcases which false bottoms were then cut open and on cutting open 3 slabs covered with masking tape were found inside each of the suitcases and thereafter the suitcases including the personal belongings were taken to the Customs Office located in the Departure Hall of the Airport along with both the accused who were escorted by the Custom Officers and other Officers at the Airport and the said substances were again examined in the Custom Office in the presence of panch witnesses and thereafter he returned back to his duty at the X'ray machine. In cross-examination he

conceded that in his statement recorded by Mr. Lotlikar, the Superintendent of Customs, he had not stated that the two accused had identified the said bags as belonging to them. Admittedly, on behalf of the complainant, the said register on which PW5/Suresh Babu was stated to have made an entry was not attached in the course of investigations nor produced before the learned trial Court to corroborate the version of PW5/Suresh Babu. The learned trial Court has rightly drawn an adverse inference on account of non production of the said register which would strengthen the case of the complainant that their names were entered on the register soon after it was suspected that the bags belonged to them. The statement of PW5/Suresh Babu that both the accused had identified the said bags as belonging to them was rightly considered as an improvement by PW5/Suresh Babu in his version before the Court since otherwise he had not stated such a fact in his earlier statement recorded by the said complainant Mr. Lotlikar. It is difficult to accept that the accused, once it was known to PW5/Suresh Babu that he had suspected certain contraband articles in the false bottom of the said suitcases would claim the ownership of the said suitcases. The learned Special Judge has rightly held that the statement of PW5/Suresh Babu that both the accused had identified the ownership of the said two bags is not inspiring any confidence. In the circumstances, therefore, the claim of PW5/Suresh Babu that both the accused on being inquired by him had

owned the ownership of the said two bags as belonging to them could not have been accepted.

6. The learned Special Judge has also found that the complainant had failed to prove by reliable evidence that the said two bags were of the accused and has also found out various other discrepancies in the evidence of the complainant vis a vis the evidence of the panch witnesses which entitled the accused to be given benefit of doubt.

7. In my view, this is not a fit case to grant special leave to appeal against the said acquittal of the accused. Hence, the application is hereby rejected.

N. A. BRITTO, J.

RD.